

# **EXHIBIT 2**

2011.03.25 Hearing - Injunctive Relief 3/25/2011 8:54:00 AM

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| 1 IN THE UNITED STATES DISTRICT COURT<br>2 FOR THE EASTERN DISTRICT OF VIRGINIA<br>3 RICHMOND DIVISION<br>4 -----<br>5 ePLUS, INC., :<br>6 Plaintiff, :<br>7 v. : Civil Action<br>8 : No. 3:09CV620<br>9 LAWSON SOFTWARE, INC., :<br>10 : March 25, 2011<br>11 Defendant. :<br>12 -----<br>13 DAILY COPY<br>14<br>15 COMPLETE TRANSCRIPT OF EVIDENTIARY HEARING<br>16 BEFORE THE HONORABLE ROBERT E. PAYNE<br>17 UNITED STATES DISTRICT JUDGE<br>18<br>19 APPEARANCES:<br>20 Scott L. Robertson, Esq.<br>Jennifer A. Albert, Esq.<br>21 Michael T. Strapp, Esq.<br>GOODWIN PROCTOR<br>22 901 New York Avenue, NW<br>Washington, D.C. 20001<br>23<br>Craig T. Merritt, Esq.<br>24 CHRISTIAN & BARTON<br>909 E. Main Street, Suite 1200<br>Richmond, VA 23219-3095<br>25 Counsel for the plaintiff ePlus<br><br>DIANE J. DAFFRON, RPR<br>OFFICIAL COURT REPORTER<br>UNITED STATES DISTRICT COURT<br>25 | 1 | 1 (The proceedings in this matter commenced at<br>2 9:30 a.m.)<br>3<br>4 THE CLERK: Civil Action No. 3:09CV620,<br>5 ePlus, Incorporated v. Lawson Software, Incorporated.<br>6 Mr. Scott L. Robertson, Mr. Craig T. Merritt,<br>7 Ms. Jennifer A. Albert, Mr. Michael G. Strapp<br>8 represent the plaintiff. Mr. Daniel W. McDonald,<br>9 Mr. Dabney J. Carr IV, Ms. Kirstin L. Stoll-DeBell,<br>10 Mr. William D. Schultz, and Ms. Rachel C. Huey<br>11 represent the defendant.<br>12 Are counsel ready to proceed?<br>13 MR. ROBERTSON: The plaintiff is, Your Honor.<br>14 MR. McDONALD: Lawson is as well, Your Honor.<br>15 THE COURT: All right. This is the<br>16 evidentiary hearing on the issue of an injunction.<br>17 Is there another firm coming into this case<br>18 for you-all?<br>19 MR. McDONALD: The Finnegan firm is involved,<br>20 Your Honor, but they are not going to be participating<br>21 in this hearing. They are going to be involved with<br>22 the appeal primarily, but they wanted to have access<br>23 to the documents.<br>24 THE COURT: Oh, okay.<br>25 Mr. Robertson.   | 3 |
| 1 APPEARANCES: (Continuing)<br>2 Daniel W. McDonald, Esq.<br>Kirstin L. Stoll-DeBell, Esq.<br>3 William D. Schultz, Esq.<br>MERCHANT & GOULD<br>4 3200 IDS Center<br>80 South Eighth Street<br>5 Minneapolis, MN 55402-2215<br>6 Dabney J. Carr, IV, Esq.<br>TROUTMAN SANDERS<br>7 Troutman Sanders Building<br>1001 Haxall Point<br>8 P.O. Box 1122<br>Richmond, VA 23218-1122<br>9<br>Counsel for the defendant Lawson.<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25  | 2 | 1 MR. ROBERTSON: Good morning, Your Honor.<br>2 If I might, I just have a few brief opening<br>3 remarks to just sort of put some of the issues in<br>4 context and then preview for the Court or highlight<br>5 some of the topics that are going to be addressed<br>6 today by Mr. Farber's testimony, if that's<br>7 permissible.<br>8 THE COURT: All right.<br>9 MR. ROBERTSON: First, we are here to discuss<br>10 the supplemental evidence, testimony and documentation<br>11 that have been provided to the Court and exchanged by<br>12 the parties since the trial ended that we believe will<br>13 support the Court's discretion to grant an injunction<br>14 in this case to prevent the ongoing infringement of<br>15 ePlus' patents.<br>16 We certainly don't want to be here today, and<br>17 I know the Court doesn't want to retry the case, or<br>18 reargue a number of the issues involving hotly<br>19 contested issues that are before the Court.<br>20 That said, there will be some additional<br>21 details concerning evidence that did come out that we<br>22 think would be important for the Court to consider.<br>23 I'd just like to highlight Section 154 of the<br>24 Patent Act. Your Honor, the only right conferred upon<br>25 a patent owner under the Patent Statute is the right | 4 |

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| <p>Hager - Redirect 261</p> <p>1 THE WITNESS: They don't at the beginning.</p> <p>2 THE COURT: After you ask the questions, you could</p> <p>3 find out if it was RSS, for example, couldn't you?</p> <p>4 THE WITNESS: We could.</p> <p>5 THE COURT: And then you could say to the customer,</p> <p>6 sorry, we can't do that?</p> <p>7 THE WITNESS: We could once we've narrowed it down to</p> <p>8 RSS.</p> <p>9 THE COURT: But you have to go through all that.</p> <p>10 THE WITNESS: We would, yes.</p> <p>11 Q Would you be able to narrow it down that way while you're</p> <p>12 still on the phone with the customer in all instances, or</p> <p>13 sometimes, or what?</p> <p>14 A Sometimes it would be while we're on the phone. Other</p> <p>15 times it would likely be weeks and potentially months.</p> <p>16 Q Why is that?</p> <p>17 A Because it's a very complex system. Sometimes defects,</p> <p>18 whether they're intermittent or what have you, you have to</p> <p>19 really dig in there and try to identify what the root cause is.</p> <p>20 We have many calls in our call center that have been open for</p> <p>21 months because we haven't been able to identify the location of</p> <p>22 the issue. That's pretty common in the software industry.</p> <p>23 MR. McDONALD: Any other questions that you have on</p> <p>24 that, Your Honor?</p> <p>25 Q You were asked about the cost increase for your customers</p>  | <p>Hager - Redirect 263</p> <p>1 implementation of our RSS and pull it out and put something</p> <p>2 else in, you know, probably the simplest would be three months,</p> <p>3 but I think on average for our hospitals, I bet you would it</p> <p>4 probably be closer to nine months because of the complexities</p> <p>5 of the hospital.</p> <p>6 Q You gave me the time. I was actually asking -- maybe you</p> <p>7 were thinking of time cost, but I think the question is</p> <p>8 actually going to the monetary cost.</p> <p>9 A Yeah, that's going to run somewhere north of 300,000, 3-</p> <p>10 to 500,000 probably for that length of time. Maybe up to</p> <p>11 750,000 on average. Some will be greater than a million.</p> <p>12 THE COURT: Does it cost that much to put RSS in?</p> <p>13 THE WITNESS: Some of our projects -- again, we put</p> <p>14 RSS in in conjunction with everything else, but it's so tied</p> <p>15 into the work flow approvals, and our work flow approvals are</p> <p>16 based off everything that happens in RSS, so pulling RSS out</p> <p>17 means you are rebuilding all those work flow approvals to go</p> <p>18 with whatever new tool you are bringing in, and that's really</p> <p>19 where the complication comes. I wish it didn't take this long,</p> <p>20 but it does.</p> <p>21 Q And finally, Mr. Robertson asked you about the advantages</p> <p>22 of selling the full suite, and I want to clarify, if the</p> <p>23 customer already has an SAP ERP suite, for example, do you have</p> <p>24 an advantage over ePlus in selling to a customer like that</p> <p>25 that's looking for eProcurement?</p> |
| <p>Hager - Redirect 262</p> <p>1 that have RSS if they had to make a change; do you recall that?</p> <p>2 A Yes.</p> <p>3 Q Do you have an estimate as to how much it would cost</p> <p>4 your -- let's take a hospital, how much money it would actually</p> <p>5 cost them to make a change or not?</p> <p>6 MR. ROBERTSON: Objection, lack of foundation, Your</p> <p>7 Honor, and I think it's outside the scope of my cross-examine.</p> <p>8 THE COURT: I think it's within the scope of your</p> <p>9 cross-examination. I don't know whether he -- I think he's</p> <p>10 asking a foundational question, that is whether he knows or has</p> <p>11 any basis to know what the cost is.</p> <p>12 MR. ROBERTSON: Also, certainly there was no</p> <p>13 documentation produced in the supplemental period with respect</p> <p>14 to the cost issue.</p> <p>15 MR. McDONALD: But he asked about it, so I thought we</p> <p>16 should flush that out. I'll ask the foundational question.</p> <p>17 Q Mr. Hager, from your experience, do you have an idea of</p> <p>18 how much it would cost, for example, a hospital to make that</p> <p>19 change away from RSS?</p> <p>20 A I do have some experience with that, yes.</p> <p>21 Q Based on your experience, what would you believe to be the</p> <p>22 likely cost to a hospital for that change?</p> <p>23 A For a hospital, the hospital -- very large hospitals I</p> <p>24 think would be more expensive than some of the non-hospital RSS</p> <p>25 customers we have, so if I were to take the simplest</p> | <p>Hager - Redirect 264</p> <p>1 A No. As a matter of fact, a disadvantage, because our RSS</p> <p>2 and Punchout won't work with an SAP suite. We wouldn't even</p> <p>3 attempt to make that sell.</p> <p>4 Q So when is it that Lawson would have actually have some</p> <p>5 advantage for offering the full suite that Mr. Robertson was</p> <p>6 asking about?</p> <p>7 MR. ROBERTSON: Your Honor, I didn't ask -- I asked</p> <p>8 him about whether or not having that full suite put my client</p> <p>9 at a disadvantage.</p> <p>10 THE COURT: Sustained.</p> <p>11 Q So in that situation then, can you explain what type of</p> <p>12 customer would be the customer --</p> <p>13 THE COURT: What situation?</p> <p>14 Q Where Lawson would have that advantage or ePlus would have</p> <p>15 the disadvantage to Lawson, what specific market situation</p> <p>16 might that be?</p> <p>17 A As was mentioned, when we're selling the entire integrated</p> <p>18 suite, it's obviously because the customer wants a fully</p> <p>19 integrated suite, so that would become our competitive</p> <p>20 advantage. I should also mention that, you know, our RSS --</p> <p>21 MR. ROBERTSON: Objection, Your Honor. He's</p> <p>22 responded to the question.</p> <p>23 THE COURT: Sustained.</p> <p>24 THE WITNESS: Actually, it's a follow-on to the --</p> <p>25 THE COURT: No, that's enough.</p>  |

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1 here to the public interest has been greatly exaggerated. What  
2 we have in the record are two declarations from two hospital  
3 workers who essentially say that this is basically a monetary  
4 inconvenience and would be, you know, disruptive, but nobody  
5 says -- the Court, I think, explored during examination its  
6 questions of the witness that, you know, the sky is going to  
7 fall here, and so that's all we have with respect to that other  
8 than attorney argument.

9 And there are other ways to handle this, Your Honor.

10 THE COURT: You have Mr. Hager's testimony.

11 MR. ROBERTSON: And he was basically addressing,  
12 first of all, the money that might be involved, and there are  
13 indemnifications provisions that Lawson has. It's chosen to  
14 build its business upon a foundation of infringement. It can't  
15 turn around and say, we shouldn't be enjoined now because we've  
16 been too effective infringers, and the case law says that as  
17 well. But there are options for Your Honor, one of which is  
18 what's been phrased the sunset provision which means the  
19 injunction could enter, but the Court could say it's not going  
20 to be effective with perhaps the hospitals for 90 days,  
21 something along those lines such that they can, with as minimal  
22 disruption as possible, replace the infringing software.

23 THE COURT: Yes, I understand.

24 MR. ROBERTSON: So we'll be addressing that in the  
25 briefing as well. Thank you.

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1 MR. McDONALD: Your Honor, I'm not sure where we're  
2 at. I've been asked to point out, in my self interest as well,  
3 we have a 7:20 flight. Is it something that's going to end  
4 soon, or do you want us --

5 THE COURT: Goodbye. I'm thinking about a slight  
6 moving of the date of the hearing because of the length of what  
7 you all have done on this one, but I won't do it, so go catch  
8 your plane.

9 MR. McDONALD: Thank you, Your Honor.

10 THE COURT: All right.

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12 (End of proceedings.)

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15 We certify that the foregoing is a correct transcript  
16 from the record of proceedings in the above-entitled matter.

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19 /s/ \_\_\_\_\_  
P. E. Peterson, RPR Date

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22 /s/  
Diane J. Daffron, RPR Date

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